



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

A-570-831

Fresh Garlic from the People's Republic of China: Preliminary Results and Partial Rescission of the 21<sup>st</sup> Antidumping Duty Administrative Review; 2014-2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (Department) is conducting the 21<sup>st</sup> administrative review of the antidumping duty order on fresh garlic from the People's Republic of China (PRC), covering the period of review (POR) November 1, 2014, through October 31, 2015. This review covers 42 manufacturers/exporters of subject merchandise. We preliminarily find that the mandatory respondents Zhengzhou Harmoni Spice Co., Ltd (Harmoni) and Qingdao Tiantaixing Foods Co., Ltd. (QTF) each failed to cooperate to the best of its ability. As a result, we preliminarily find that Harmoni has not rebutted the presumption that it is part of the PRC-wide entity, and we preliminarily base QTF's dumping margin on adverse facts available. In addition, we preliminarily find that voluntary respondent Shenzhen Xinboda Industrial Co., Ltd. (Xinboda) made sales of subject merchandise at less than normal value (NV). We invite interested parties to comment on these preliminary results.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]

FOR FURTHER INFORMATION CONTACT: Kathryn Wallace or Alexander Cipolla,

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DC 20230; telephone: (202) 482-6251 or (202) 482-4956.

### *Scope of the Order*

The merchandise covered by the order includes all grades of garlic, whole or separated into constituent cloves. Fresh garlic that are subject to the order are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) 0703.20.0010, 0703.20.0020, and 0703.20.0090. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description remains dispositive. For a full description of the scope of this order, please see “III. Scope of the Order” in the accompanying Preliminary Decision Memorandum.<sup>1</sup>

### *Partial Rescission of Administrative Review*

On January 7, 2016, the Department initiated a review of 42 companies in this proceeding.<sup>2</sup> On March 11, 2016, withdrawal requests were timely filed for 14 companies.<sup>3</sup> The Department is, therefore, partially rescinding this review with respect to the companies listed in Appendix I, in accordance with 19 CFR 351.213(d)(1).

### *Affiliation*

For the reasons set forth in the Preliminary Decision Memorandum and in accordance with 19 CFR 351.401(f), and the Department’s practice, we are treating QTF, Qingdao Tianhefeng Foods Co., Ltd. (QTHF), Qingdao Beixing Trading Co., Ltd. (QBT), Qingdao Lianghe International Trade Co., Ltd. (Lianghe), and Qingdao Xintianfeng Foods Co., Ltd (QXF) as a single entity, for the purposes of this preliminary determination.<sup>4</sup>

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<sup>1</sup> See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Decision Memorandum for the Preliminary Results of the 2014-2015 Antidumping Duty Administrative Review: Fresh Garlic from the People’s Republic of China” (December 5, 2016) (Preliminary Decision Memorandum).

<sup>2</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 81 FR 736 (January 7, 2016) (*Initiation Notice*). For a list of the 42 companies, see *id.* at 81 FR 738-739.

<sup>3</sup> See Letter from Petitioners, “21st Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China – Petitioners’ Withdrawal of Certain Requests for Administrative Review,” (March 11, 2016).

<sup>4</sup> See Preliminary Decision Memorandum “Affiliations” section.

## *Methodology*

The Department is conducting this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act). Export prices were calculated in accordance with section 772(a) of the Act. Because the PRC is a non-market economy (NME) within the meaning of section 771(18) of the Act, NV has been calculated in accordance with section 773(c) of the Act. We relied, in part, on the facts available, with adverse inferences, for our preliminary determination, in accordance with section 776 of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum, which is hereby adopted by this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>, and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at <http://enforcement.trade.gov/frn/>. The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

## *PRC-Wide Entity*

The Department's policy regarding conditional review of the PRC-wide entity applies to this administrative review.<sup>5</sup> Under this policy, the PRC-wide entity will not be under review unless a party specifically requests, or the Department self-initiates, a review of the entity. Because no party requested a review of the PRC-wide entity in this review, the entity is not under review and the entity's rate (*i.e.*, \$4.71/kg) is not subject to change. Aside from the no

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<sup>5</sup> *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963 (November 4, 2013).

shipments companies discussed below, and the companies for which the review is being rescinded, the Department considers all other companies for which a review was requested, and which did not preliminarily qualify for a separate rate, to be part of the PRC-wide entity. For additional information, *see* the Preliminary Decision Memorandum.

*Preliminary Determination of Separate Rates for Non-Selected Companies*

In accordance with section 777A(c)(2)(B) of the Act, the Department employed a limited examination methodology, as it determined that it would not be practicable to examine individually all companies for which a review request was made.<sup>6</sup> There were five exporters of subject merchandise from the PRC that have demonstrated their eligibility for a separate rate but were not selected for individual examination in this review. These five exporters are listed in Appendix II.

Neither the Act nor the Department's regulations address the establishment of the rate applied to individual companies not selected for examination where the Department limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. The Department's practice in cases involving limited selection based on exporters accounting for the largest volume of imports has been to look to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others rate in an investigation. Section 735(c)(5)(A) of the Act instructs the Department to use rates established for individually investigated producers and exporters, excluding any rates that are zero, *de minimis*, or based entirely on facts available in investigations. In this review, we calculated a preliminary weighted-average dumping margin for Xinboda, while we preliminarily determined that the application of facts available with adverse inferences is warranted for Harmoni and QTF. Therefore for the

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<sup>6</sup> *See* Memorandum to Edward Yang, "Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Respondent Selection Memorandum," dated March 1, 2016.

preliminary results, the Department has preliminarily determined to assign Xinboda's rate to the non-selected separate-rate companies.

#### *Preliminary Determination of No Shipments*

The companies listed in Appendix III timely filed "no shipment" certifications stating that they had no entries into the United States of subject merchandise during the POR. Consistent with its practice, the Department asked U.S. Customs and Border Protection (CBP) to conduct a query of potential shipments made by these companies. CBP provided information<sup>7</sup> that indicated that one of the companies had shipments into the United States during the POR. In addition, the Department has found two of these companies to be a part of the QTF entity, discussed further in the "Affiliations" section of the Preliminary Decision Memorandum. Based on the certifications by the remaining companies and our analysis of CBP information, we preliminarily determine that the companies listed in Appendix III did not have any reviewable transactions during the POR. In addition, the Department finds that consistent with its refinement to its assessment practice in NME cases, further discussed below, it is appropriate not to preliminarily rescind the review, in part, in these circumstances, but rather to complete the review with respect to these 10 companies, and issue appropriate instructions to CBP based on the final results of the review.<sup>8</sup>

#### *Preliminary Results of Review*

The Department preliminarily determines that the following weighted-average dumping margins exist for the period November 1, 2014, through October 31, 2015:

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<sup>7</sup> See Memorandum from Alexander Cipolla, "21<sup>st</sup> Administrative Review of Fresh Garlic from the People's Republic of China: Concerning Shenzhen Yuting Foodstuff Co., Ltd.'s No Shipment Certification," dated December 5, 2016.

<sup>8</sup> See *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694, 65694-95 (October 24, 2011); see also "Assessment Rates" section below.

<b>Exporter</b>	<b>Weighted-Average Margin (dollars per kilogram)</b>
Shenzhen Xinboda Industrial Co., Ltd.	2.27
Jinan Farmlady Trading Co., Ltd.	2.27
Jining Alpha Food Co., Ltd.	2.27
Shandong Jinxiang Zhengyang Import & Export Co., Ltd.	2.27
Shenzhen Bainong Co., Ltd.	2.27
Weifang Hongqiao International Logistics Co., Ltd.	2.27
Qingdao Tiantaixing Foods Co., Ltd.	4.71
PRC-Wide Rate	4.71

*Disclosure, Public Comment and Opportunity to Request a Hearing*

The Department intends to disclose the calculations used in our analysis to parties in this review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Interested parties may submit written comments (case briefs) no later than 30 days after the date of publication of these preliminary results of review, pursuant to 19 CFR 351.309(c)(ii) and rebuttal comments (rebuttal briefs) within five days after the time limit for filing case briefs, pursuant to 19 CFR 351.(d)(1). Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs must be limited to issues raised in the case briefs. Parties who submit arguments are requested to submit with the argument: (1) a statement of the issue; (2) a brief summary of the argument; and, (3) a table of authorities. *See* 19 CFR 351.303 (for general filing requirements). All electronically filed documents must be received successfully in its entirety by the Department's electronic records system, ACCESS.

Pursuant to 19 CFR 351.310, any interested party may request a hearing within 30 days of publication of this notice. Hearing requests should contain the following information: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the case and rebuttal

briefs. *Id.* If a party requests a hearing, the Department will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing.

The Department intends to issue the final results of this review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

#### *Assessment Rates*

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review, in accordance with 19 CFR 351.212(b). For the companies for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i).<sup>9</sup> The Department will direct CBP to assess rates based on the per-unit (*i.e.*, per kilogram) amount on each entry of the subject merchandise during the POR. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of review.

The Department announced a refinement to its assessment practice in NME cases. Pursuant to this refinement in practice, for merchandise that was not reported in the U.S. sales databases submitted by an exporter individually examined during this review, but that entered under the case number of that exporter (*i.e.*, at the individually-examined exporter's cash deposit rate), the Department will instruct CBP to liquidate such entries at the NME-wide rate. In addition, if the Department determines that an exporter under review had no shipments of the

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<sup>9</sup> If our determination in the final results is to rescind this administrative review with respect to Kaihua, then we will not issue liquidation instructions for Jinxiang Kaihua Import & Export Co., unless the preliminary injunction entered on October 22, 2015, in Court of International Trade case number 15-00289 has lifted.

subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.*, at that exporter's rate) will be liquidated at the PRC-wide rate.<sup>10</sup>

#### *Cash Deposit Requirements*

The following cash deposit requirements will be effective upon publication of the final results of this review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2) of the Act: (1) for the companies listed above, the cash deposit rate will be the rate established in these final results of review (except, if the rate is zero or *de minimis*, then zero cash deposit will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 4.71 U.S. dollars per kilogram; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These requirements, when imposed, shall remain in effect until further notice.

#### *Notification to Importers*

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

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<sup>10</sup> For a full discussion of this practice, see *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011).



We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.213(h) and 351.221(b)(4).

Dated: December 5, 2016

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Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

## **Appendix I**

### **Companies For Which Reviews Have Been Rescinded**

1. Anqiu Friend Food Co., Ltd.
2. Jinxiang Chengda Import & Export Co., Ltd.
3. Jinxiang Infarm Fruits & Vegetables Co., Ltd.
4. Jinxiang Tianma Freezing Storage Co., Ltd.
5. Nanyang Nianfeng Food Co., Ltd.
6. Qingdao Jia Shan Trade Co.
7. Qingdao Ritai Food Co., Ltd.
8. Shandong Helu International Trade Co., Ltd.
9. Shandong Libaqiang
10. Shandong Longtai Fruits and Vegetables Co., Ltd.
11. Weifang Naike Foodstuffs Co., Ltd.
12. Weifang Shennong Foodstuff Co., Ltd.
13. Weifang Wangyuan Food Co., Ltd.
14. Zhengzhou Xiwannian Food Co., Ltd.

## **Appendix II**

### **Non-Selected Separate Rate Companies**

1. Jinan Farmlady Trading Co., Ltd.
2. Jining Alpha Food Co., Ltd.
3. Shandong Jinxiang Zhengyang Import & Export Co., Ltd.
4. Shenzhen Bainong Co., Ltd.
5. Weifang Hongqiao International Logistics Co., Ltd.

### **Appendix III**

#### **Companies That Have Certified No Shipments**

1. Jining Yifa Garlic Produce Co., Ltd.
2. Jining Shengtai Fruits & Vegetables Co., Ltd.
3. Jining Shunchang Import & Export Co., Ltd.
4. Jinxiang Guihua Food Co., Ltd.
5. Jinxiang Richfar Fruits & Vegetables Co., Ltd.
6. Qingdao Maycarrier Import & Export Co., Ltd.
7. Qingdao Sea-Line International Trading Co., Ltd.
8. Shandong Chenhe International Trading Co., Ltd.
9. Shijiazhuang Goodman Trading Co., Ltd.
10. Yantai Jinyan Trading, Inc.

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